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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/562,443

01/18/2006

Jean-Noel Thorel

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EXAMINER

SIMMONS WILLIS, TRACEY A

ART UNIT

PAPER NUMBER

1619

MAIL DATE

DELIVERY MODE

12/29/2009

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/562,443	<b>Applicant(s)</b> THOREL, JEAN-NOEL	
	<b>Examiner</b> TRACEY SIMMONS WILLIS	<b>Art Unit</b> 1619	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 23 July 2009.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 8-11 and 14-25 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 8-11 and 14-25 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All    b) ☐ Some \*    c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)            | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftperson's Patent Drawing Review (PTO-948)    | Paper No(s)/Mail Date. _____                                      |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>03062006</u>  | 6) <input type="checkbox"/> Other: _____                          |

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## **DETAILED ACTION**

### ***Status of the Claims***

Applicant's election with traverse of Group II including claims 8-11 and 14-25 in the reply filed on July 23, 2009 is acknowledged. The traversal is on the ground(s) that the subject matter is related and no search burden is present. This is not found persuasive because the inventions were shown to lack a special technical feature over prior art was established in accordance with 37 CFR 1.499.

Upon further consideration, the election of species was withdrawn. The requirement is still deemed proper and is therefore made FINAL.

Claims 8-11 and 14-25 are pending in the current application and are being considered on their merits.

Claims 1-7 and 12-13 have been cancelled. This is the first Office Action on the merits of the claims.

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

**Claims 8-9, 11, and 14-25 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent 7,195,787 (2007, Pykett et al) in view of "Antioxidant activity, lipid peroxidation and skin diseases. What's new," (2003, Briganti et al) and evidenced by**

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**“Antioxidants in Prevention of Reperfusion Damage of Vascular Endothelium” (2000, Wall).**

The instant claims recite a method for treating acne, seborrheic dermatitis, or skin disorders, due to the formation of comedos, the method comprising applying to skin a dermatological and/or cosmetic composition comprising at least one lipophilic antioxidant selected from the group consisting of gallates, flavonoids extracted from ginkgo biloba, and butylated hydroxytoluene (BHT). The composition further comprises a hydrophilic antioxidant selected from mannitol and vitamin C. The total amount of antioxidant in the composition is from 0.0001 to 20% wt of the composition.

Pykett teaches topical cosmetic compositions for application to the skin to protect against oxidative damage (sunlight, etc.) related to aging, comprising a synergistic mixture of anti-free-radical agents selected from compound such as ascorbic acid (hydrophilic antioxidant) and herbal extracts from ginkgo biloba (lipophilic antioxidant), *inter alia* [abstract]. *claims 8, 9, and 11* Antioxidant activity from ginkgo biloba is believed to be from flavonglycocides [col 2, line 37]. One embodiment includes mannitol (hydrophilic antioxidant) and BHT (butylated hydroxytoluene and lipophilic antioxidant) [col 16, Example 13]. *claims 8, 9, and 11* The total amount of antioxidants in the composition ranges from 0.05 to 10% [col 2, line 56]. *claims 14-25* The compositions were applied to the skin of the forearm [col 28, lines 58-59].

Pykett does not teach treatment of acne, seborrheic dermatitis, or skin disorders.

Briganti teaches a correlation between oxidative stress and skin disease such as acne [pg 664, col 2]. Briganti suggests antioxidant supplementation could be a therapeutic approach to atopic dermatitis [pg 664, col 2]. In comedo lesions, reactive oxidative species (ROS) overflows

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due to a lack of inhibitors topical application of antioxidants can be effective in improving the efficacy or preventing deleterious effects of therapeutics for acne [pg 666, col 1].

One of ordinary skill in the art at the time of the invention would have been motivated to use antioxidants such as BHT and ginkgo extract to treat skin diseases and acne as Briganti teaches use of antioxidants for treatment of dermatitis and acne.

While Pykett does not teach use of mannitol as an antioxidant, this property was known in the art as evidenced by Wall [pg 69, col 1].

**Claim 10 is rejected under 35 U.S.C. 103(a) as being unpatentable over Pykett in view Briganti and evidenced by Wall as applied to claims 8-9, 11, and 14-25 above, and further in view of U.S. Pre-grant Application Publication 2003/0095940 (Schiltz).**

The instant claims are as recited above. The claims further require dodecyl gallate as a lipophilic antioxidant.

The combined teachings of Pykett, Briganti, and Wall are relied upon above.

None of the references teach dodecyl gallate.

Schiltz teaches anti-ageing compositions that can include antioxidants such as dodecyl gallate [pg 4, par 27]. *claim 10*

One of ordinary skill in the art at the time of the invention would have been motivated to add dodecyl gallate to the composition of Pykett with a reasonable expectation of success as the Pykett teaches a mixture of antioxidants.

Therefore the invention as a whole would have been *prima facie* obvious at the time it was made.

***Conclusion***

No claims are allowed.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to TRACEY SIMMONS WILLIS whose telephone number is (571)270-5861. The examiner can normally be reached on Mondays to Fridays from 8:30 am to 5:00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Yvonne Eyler, can be reached at (571)272-0871. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

/T. S.W./

Examiner, Art Unit 1619

/YVONNE L. EYLER/

Supervisory Patent Examiner, Art Unit 1619